



BEFORE **THE** STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
 WILLIAM M. AND SHIRLEY D. LANGSTON )

For Appellants: William M. Langston,  
in pro. per.

For Respondent: **Terry L. Collins**  
Counsel,

O P I N I O N

This appeal is made pursuant to section 18593 of the **Revenue and Taxation Code** from the action of the Franchise Tax Board on the protest of William **M.** and Shirley D. Langston against a proposed assessment of additional personal income tax in the amount of \$450.60 for the year 1979.

Appeal of William M. and Shirley D. Langston

The sole issue presented by this appeal is whether appellants are entitled to a deduction for alimony payments made by appellant-husband to his former spouse during the period in which appellants were nonresidents of California.

Appellants were residents of California until February 15, 1979, at which time they moved to, and became residents of, Oregon. Upon audit, respondent made two uncontested adjustments to the amount of appellants' taxable income and (issued, a notice of proposed assessment. While appellants responded by concurring with these adjustments, they asserted that the \$800 deduction for alimony payments originally claimed on their return should be increased to \$8,715, the total amount of alimony paid by appellant-husband to his former spouse in 1979. Respondent determined that appellants were not entitled to a deduction for alimony payments made during the period of nonresidency, and recomputed the allowable alimony deduction on a **pro rata** basis reflecting the number of days appellants were California residents in 1979. This computation resulted in an allowable deduction of \$1,089 and reduced the proposed assessment from \$483.60 to the amount in issue.

Revenue and Taxation Code section 17304 is controlling in this appeal. That section provides as follows: "The deduction provided by section 17263, relating to spousal support or, separate maintenance payments, shall not be allowed to a nonresident spouse." In accordance with the express terms of **this** statute, we must conclude that respondent properly determined that appellants **were** entitled to deduct **only** that pro rata **share** of alimony payments made while they **were** residents of this state. Seen in **this** light, appellants' argument that respondent's action is inequitable because it results in multiple taxation of their income **is** without merit. Income tax deductions are a matter of legislative grace, and only when there exists a clear provision **therefor** can any particular deduction be allowed. (Deputy v. du Pont 308 U.S. 488 [84 L.Ed. 416] (1940).) The relevant **statutory** authority quoted above specifically provides that spousal support payments made by nonresidents are not deductible.

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeal of William M. and Shirley D. Langston

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code,, that the action of the Franchise Tax Board on the protest of William M. and Shirley D. **Langston** against a proposed **assessment** of additional personal income tax in the amount of \$450.60 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of January, 1983, by the State **Board of** Equalization, with **Board Members** Mr. Bennett, Mr. Droneriburg and Mr. Nevins present.

William M. Bennett \_\_\_\_\_, C h a i r m a n

Ernest J. Dronenburg, Jr. \_\_\_\_\_, Member

Richard Nevins \_\_\_\_\_, Member

\_\_\_\_\_, Member

\_\_\_\_\_, Member